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ORIGINAL PAPER

Mixed Messages: How Criminal Law Fails to Express Feminist Values

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Abstract

Criminal law practices in the US, including policing and incarceration, have drawn heavy criticism for their disproportionate impact on black people, particularly black men. At the same time, some feminist scholars and activists advocate for increases in criminal law responses to sexual assault, including expanding criminal statutes to cover more instances of sexual assault and increasing sentencing guidelines. These reforms are often justified by claims that criminal law should express more feminist values and reject sexist social schemas. This paper makes the case that criminal legal interventions aimed at changing sexist social schemas, such as 'rape culture,' are unlikely to be successful because criminal law is effective at maintaining existing social norms, but bad at introducing novel ones. Similarly, in the US, criminality has been ideologically linked to blackness, so attempts to use the stigma of criminality to combat sexual violence are likely to reinforce anti-black racism. The very meaning of a criminal law depends on related social schemas, and the racist social schemas associated with criminality undermine the ability of criminal legal responses to present anti-sexist values. At best, criminal legal reforms aimed at expressing the equal dignity of women will be ambiguous because their meaning is negotiated by existing sexist and racist social schemas. Thus, penal expressivism cannot offer a justification for using criminal law to combat sexual assault.

Keywords Philosophy of criminal law · Penal expressivism · Feminist jurisprudence · Punishment · Sexual assault · Racism · Anti-black racism · Social schemas · Ideology

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1 Introduction

Criminal law practices in the US, including policing and incarceration, have drawn heavy criticism for their disproportionate impact on black people, particularly black men.[1] At the same time, some feminist scholars and activists advocate for using criminal law to combat sexual assault by growing criminal law's reach, including expanding criminal statutes to cover more instances of sexual assault and requiring harsher punishments for such crimes. Other anti-violence feminists point to tensions between reforms aimed at shrinking the criminal legal system for racial justice purposes and expanding it for feminist purposes. Indeed, some abolitionists label reforms that increase criminal responses to sexual assault as 'carceral feminism,'[2] a pejorative term.

Feminists who support increasing criminal law responses may point to incapacitation and deterrence as justifications, but often the rationales they give are more complex. At least some of these justifications, given by theorists and activists alike, are based on arguments about the messages criminal law sends, not on incapacitation or classic deterrence. The idea that criminal law can send feminist messages is properly understood as a version of penal expressivism that I call *feminist penal expressivism*. On this view, increasing criminal law responses to sexual assault is justified because it expresses the value of women, which the prevalence of sexual assault has consistently denied. Additionally, some advocates see criminal law as a tool for altering sexist social schemas like social scripts, norms, and standard stories around gender, dating, and sexual assault, that is, 'rape culture.'

But sexist social schemas are not best countered by criminal law because criminal law's focus is on finding individual guilt, not on evaluating existing social practices. Because criminal prohibition is associated with socially deviant behavior, laws criminalizing behaviors that are part of commonly accepted social scripts will be difficult to enforce. Moreover, the social meanings of criminal law in the US are entangled with anti-black racism. By using the stigmatizing power of criminal law, such efforts are likely to reinforce anti-black social meanings embedded in these criminal law institutions.

Many social science scholars have examined the ways that criminal law responses to sexual assault and domestic violence have contributed to mass incarceration and are in tension with anti-racist goals (e.g., Goodmark 2023, Gruber 2020, Richie 2012, Bumiller 2008, Mills 2003). These works conclude that criminal law is not the best tool for combating sexual assault or domestic violence using qualitative and quantitative data that show the limited impact of pro-criminal law reforms on the prevalence of sexual assault and the harms they cause to black and other marginalized communities, particularly through incarceration. This paper contributes something new to this

[1] This paper focuses on anti-black racism, especially against black men, because of the prevalence of the black rapist stereotype in the US. Similar racist ideologies pertain to other racialized groups, including Latinos, North American Indigenous men and Middle Eastern/North African (MENA) men. Although this paper focuses on anti-black ideology and sexual assault, I anticipate that very similar accounts could be given of the risks associated with the stereotypes about other non-white men in related racist ideologies.

[2] See Terwiel (2020), Taylor (2018), and Gotell (2015) for a philosophically informed debate about 'carceral feminism.'

discussion by examining how these tensions appear in *the social meanings* associated with criminal law practices as well as sexual assault and anti-black racism. In so doing, the paper also argues that penal expressivist commitments count against using criminal law to address sexual assault in the US and similar racial contexts.

This argument is conceptual, but not a priori. Social meanings are networks of ideas—concepts—that shape how people understand and act in the world. Thus, the argument does not rely only on a priori, conceptually necessary features of criminal law practices in the abstract, but rather on how these concepts fit together with social meanings in the US and Canada in the 2020s. What certain words mean or how certain institutions play out depends in part on the social world they are in. I refer to these ideas with all their contingent features as social meanings, which will vary from society to society, and indeed vary amongst communities within national societies.

Claims about social meanings cannot be reduced to testable empirical propositions. Social meanings are often so embedded in our way of life that they are invisible to us, and they are thus difficult to measure by surveys or observation (Bicchieri 2017: 50–105). Indeed, social meanings are implicit in shaping empirical data in the first place, including the empirical data we have about sexual assault itself (Levine 2021, Rutherford 2017). For example, one of the most famous statistics—that one in four women on college campuses have experienced sexual assault (Koss 1987)—was based on a particular view of what counts as sexual assault that remains contested even amongst feminist scholars. Koss counted some sexual encounters as assault, for example when participants were intoxicated, even when subjects themselves described acts as consensual (Levine 2021: 9, Rutherford 2017). My point is not to dispute the prevalence of sexual assault or to argue that quantitative evidence is irrelevant, but to show that social meanings shape and complicate empirical data about sexual assault. We need more than empirical data to understand the prevalence of sexual assault and how to combat it. In sum, the argument this paper advances is conceptual in that it provides a model for interpreting the social world and criminal law as an institution in that social world. With that said, the argument of this paper must be at least broadly consistent with available empirical data if it is to be plausible.

This paper will proceed as follows. In the next section, I will explain and motivate feminist penal expressivism, arguing that criminal laws, policies, and actions do in fact express a society's values. Thus, to the degree that sexual violence and violence toward black people are not punished severely in the US, US society does not sufficiently value the lives of women of all races and black people. In the third section, I explain the mechanisms by which criminal law expresses these social values. Sexist and racist social schemas include stereotypes, social scripts, norms, and standard stories. Criminal laws, policies, and decisions tend to instantiate these social schemas. In the fourth section, I will explain why some key feminist-led reforms to criminal codes and sentencing rely on expressivist justifications because they hope to change the underlying values and social schemas by changing criminal law and policy. In the fifth section, I argue that criminal law is a bad tool for changing sexist structures because criminal laws that counter existing hegemonic social schemas tend to be narrowed or eliminated as they are applied. Thus, feminist penal expressivism rightly asserts that criminal legal enforcement expresses a society's underlying values, but wrongly assumes that changing these laws directly will change the underlying values.

Finally, I conclude that feminists should be wary of using criminal law as a tool to fight sexual violence because of criminal law's reinforcement of racist social schemas and doubtful impact on sexist social schemas.

2 Feminist Penal Expressivism

Penal expressivism includes two related propositions about punishment and expression. First, criminal law, particularly punishment, expresses condemnation of criminalized act types and punished act tokens. Second, criminal law and punishment are justified if and only if they properly express condemnation of wrongful acts. Penal expressivism also can include the proposition that, in addition to expressing condemnation of act types and tokens, criminalization, prosecution, and punishment also express the values of a given community. Feminist penal expressivism includes these three propositions, inflected with feminist values and goals. Particularly, feminist penal expressivism advocates for the use of criminal law to express the dignity of women and the wrongfulness of sexual assault. Criminal law practices are justified when they express the right messages about women's moral worth.

The first proposition is based on the idea that punishment has a unique capacity for expressing moral condemnation and can therefore express condemnation of sexual assault. Beyond offering deterrence and incapacitation to prevent future assaults, punishment expresses the equal dignity of a crime's victim, which the act of sexual assault has tried to deny. Feminist philosopher Jean Hampton (1992) argues that punishment is the proper response to the particular wrongs of many criminal acts. Criminal acts are more than harmful; they express disrespect of their victims and are thus *wrongful*. Sexual assault and domestic violence not only harm their direct victims, but also express deeply disrespectful views of women—that these victims and, by extension, all women are not as worthy of respect and autonomy as men. The expressive capacity of punishment gives it the power to vindicate the victim and demonstrate that the society, represented by the state, acknowledges the serious wrong of sexual violence and condemns it.

Punishment of a criminalized act can express these feminist messages because of the unique *social meanings* of criminal law and punishment. As Joel Feinberg (1965) observed, punishing an act is different than merely penalizing it; criminal law is supposed to delineate those actions that are completely off the table in a society. Defining an act as criminal is to say that it is morally repugnant. It is outside the scope of typical, expected, or acceptable behavior, and that it is harmful to individuals or the community (399). In short, criminalizing an activity, thus making those who commit it subject to punishment, is a way of stigmatizing it. In past and present American life, criminalizing interracial marriage, same-sex intercourse, and abortion have been part of efforts to stigmatize those actions. In this way, penal expressivism points to the social effects of criminalizing and punishing.

The ability of criminal law and punishment to send these messages depends on the social context. The social meanings of criminal laws and punishment exist in a semiotic network of other social meanings and values in any given context. To illustrate the way social meanings of punishment depend on social context consider

the now-infamous 2015 Brock Turner sexual assault case ("California" 2019).[3] In that case, a jury found Turner guilty of three counts of the sexual assault of Chanel Miller[4] while she was unconscious in an alleyway outside a Stanford frat party. Judge Aaron Persky sentenced Turner to six months in county jail. Many were outraged at this sentence because in the context of the US, six months is a very short criminal sentence. In other societies where sentences are shorter overall, six months might not mean 'lenient.' Thus, the outrage at Turner's sentence is dependent on the meaning of different lengths of criminal sentences in different contexts.

The message sent by this sentence was also dependent on the social meanings of the identities of Turner and Miller. Turner was a young, well-off, white man attending an elite university on a swimming scholarship. The sentence expressed a set of connected sexist and racist messages, including that the lives of young, white, affluent men are more important than those of women and that sexual violence of this kind is not a serious wrong. Critics believed that these messages were bolstered by Judge Persky's comments at sentencing, where Persky expressed concern for Turner over the impact of the media coverage and a long prison sentence (Persky 2016). In his application of sentencing guidelines, Persky counted Turner as remorseful despite Turner's refusal to acknowledge that he sexually assaulted Miller, attributing confusion to Turner because of alcohol consumption. These comments mirrored the background social scripts and narratives about what 'real' rape and 'real' rapists look like. Many were quick to criticize the sentence and demand legal reform, ultimately recalling Persky and introducing changes in California's criminal sexual assault statutes (Ford 2016). Recall leaders were not responding to the brute fact of the length of the sentence, but to the social meaning of such a sentence in the US, along with the social significance of the crime and Turner's identity.

The Turner case and its response are also a particularly strong example of the proposition that punishments express the values of a given society. Hampton argues that the failure to punish gender-based violence is evidence of pervasive sexism in American and Canadian societies. She writes:

> When American courts, until recently, responded to spousal abusers with light punishment or no punishment at all, they were expressing the view that women were indeed the chattel of their husbands. When the present-day Canadian courts use a sentencing policy that gives certain types of sexual offenders lighter sentences, on average, than those given to people who have been convicted of burglary, they are accepting a view of women that grants them standing similar to—but slightly lower than—mere objects (1992: 1691–1692).

For Hampton, these examples show that failures to punish are more than failures to deter or incapacitate. These are failures to express the right values.

On an expressivist view, punishment is essential for the proper expression of condemnation. It is not enough to criminalize or even convict. As Feinberg argues,

[3] The facts discussed in this paragraph are taken from this article unless otherwise noted.

[4] Chanel Miller, identified only as Emily Doe in court documents, has since specifically asked that her name be used. Miller (2019).

without punishment that expresses the seriousness of the crime, criminalization, prosecution, and conviction are merely "ever-less-convincing lip service to a noble moral judgment" (1965: 407). Tommie Shelby (2016), critiquing expressivism, argues that criminalizing certain acts expresses condemnation of those act types, and conviction itself expresses official condemnation of tokens of those act types. He argues that the state need not *punish* to express condemnation (240). Shelby's critique of penal expressivism, however, fails to appreciate the conventional aspect of punishment as condemnation. While it is logically possible that conviction could express serious condemnation, that would depend on the conventions of the society. In the US, we punish so many types of acts with prison time—not only violent crimes, but drug distribution and property crimes—that conviction alone, or even a non-prison sentence, is unlikely to send a condemnatory message. Less punitive societies may more easily be able to express condemnation with conviction or a non-prison sentence. In one respect then, Shelby is right. In principle, nothing prevents conviction itself from expressing condemnation. But, given the conventions in the US, conviction alone does little to communicate condemnation for serious violations.

Failure to seriously punish those who commit acts of sexual violence is evidence of deep sexist values in the US context. In the same way, the failure of the criminal legal system to properly punish, or at times even prosecute, police and vigilantes who kill black people is evidence of American anti-black racist values. Activists use the phrase 'Black Lives Matter' (BLM) as a counterclaim to this evidence that, to those who are in power in the US, black people's lives and well-being do not matter. If BLM activists are correct, and I think they are, the US criminal legal system expresses disregard for the lives of black people in its failure to consistently punish, and therefore condemn, those who unjustifiably kill black people.

Punishment's power to express condemnation is dependent on related expressive powers at all stages of the criminal legal system. Legislatures express social views of what counts as real rape through criminal statutes defining sexual assault and setting sentencing guidelines. Executive branches express social views of which people deserve protection and what crimes are truly serious when they allocate resources, set priorities, and carry out policies for investigation and prosecution. The judiciary expresses similar values through bail determinations, granting protective orders, conviction, sentencing, and probation. If a society criminalizes, investigates, prosecutes, and punishes drug sales, retail theft, and violent crime seriously, but does not do the same with sexual assault, it is reasonable to infer that the society does not condemn sexual assault as strongly as drug sales, et cetera. Likewise, if a society does not investigate, prosecute, or punish acts of violence at the same rate where the victim is from a particular race, it is reasonable to infer that the society in question does not take violence against that racial group seriously. To the extent that this describes the US, the US does not view sexual assault or violence against black people as serious wrongs.

2.1 Sexist and Racist Social Schemas: Mechanisms of Oppression

Criminal law not only expresses condemnation and values. It also can codify and enforce underlying social norms and express social meanings that are already preva-

lent in a given society. One motivation that feminists may have for increasing criminal legal responses to sexual assault is for criminal law to codify and enforce more feminist social norms and express feminist social meanings.

A. Social Meanings.

I borrow the concept of social meanings from Lawrence Lessig (1995). Social meanings are "the semiotic content attached to various actions, or inactions, or statuses, within a particular context" (951). Items can also have social meanings. For example, plaid flannel shirts once signified lower class status because they were work shirts for laborers. Likewise, certain brands of cars, watches, or clothes can signify high social status. Lessig explains that social meanings are attached to social practices as well. For example, it was dishonorable to refuse a duel in the antebellum American South (968–972), smoking has signified both independence and lower social class at different times in the US (1025–1031), tipping can express gratitude in the US or insult in Europe, and in some communities, wearing a seatbelt signifies disrespect to a taxi driver (952–953).

Social meanings are organized into networks that vary across social contexts. One way to think about the way these networks organize social meanings is through social 'schemas.' Social schemas are the networks of connected stereotypes, scripts, norms, stories, and values that allow people to interpret the shared social world and act within it (Haslanger 2016: 126–128). A *stereotype* is a shorthand for categorizing the world, particularly other people (Bicchieri 2017: 132). Imagine the stereotype of a waiter in an upscale restaurant. You will likely have an image of a person in a crisp white shirt with a black waistcoat, perhaps holding a silver tray or a white cloth. Though few real waiters fit the stereotype perfectly, the image nevertheless allows customers to quickly identify waitstaff when they enter a new restaurant (Bicchieri 2017: 132–133). *Social scripts* tell us what to do in given situations. The social script of 'upscale restaurant' tells customers that they will be seated by a host, be given menus, order, eat, and wait for their check at their table (Bicchieri 2017: 132–133). The perfect performance of an identical script is not the point; the script is a loose reference for interpretation and action. *Social norms* are rules for what others expect from us and are often built into social scripts (Bicchieri 2017: 35, 132–135). At an upscale restaurant, we know we are expected to keep voices down, use more formal table manners, and pay at the end of the meal, and in the US, we are expected to tip. Unlike fast casual dining, we should not try to bus our own table. Finally, *standard stories* help us interpret the accounts that others tell us and the experiences we ourselves have (Haslanger 2015, 2–4). If, in an upscale restaurant, we see a man get on one knee and offer a small box to his woman companion, one of the standard 'marriage proposal' stories will help us interpret what is happening. It might take longer to categorize the same action as a proposal if it takes place in a Chipotle. Moreover, social schemas often express the *values* of the society they operate in. Examples of values include valorizing hard work over talent, independence over interdependence, men's autonomy over women's, and the public over the private.

Some schemas help us navigate the world in relatively harmless ways, while others sort and classify by systematically disadvantaging certain social groups. Table 1 gives examples of typically harmless versus oppressive schemas.

Much of my terminology and structure comes from Lessig on social meaning and Haslanger on schemas (2015: 5) and "networks of semiotic relations" (2017: 12) as shared resources we use to navigate the world. Haslanger's work often focuses on how various structures of social meanings "sustain unjust relationships" (2017: 12). Other philosophers refer to concepts like social schemas, sometimes borrowing or expanding on frameworks from sociology or social psychology. José Medina (2013) writes about the "social imaginary," which includes something like social schemas: "the repository of images and social scripts that [the social imagination] produces" (259). Richard Delgado and Jean Stefanic (1995) explain that "meanings and social interpretations," "social practices," and "narratives" mitigated the impact of *Brown v. Board of Education* on racist practices in the US (553–555). Though these concepts are not identical, loosely speaking, they all refer to the ways that existing networks of shared meanings shape how actors interpret the world. Social schemas also prefigure an agent's options for action. Thus, these networks of shared meaning can either enable or limit our ability to recognize and remedy injustice.

B. Sexist Social Meanings and Sexual Assault.

Social schemas about gender and sexuality are essential for understanding the systemic nature of sexual violence (Bicchieri 2017: 134–136). While sexual violence is made up of discrete acts of violence that most immediately harm victim-survivors, they are also part and parcel of the structural oppression of women that permeates institutions in the US and elsewhere. The causes of such acts of violence are not just the individuals who commit them, but also the social structures that these individuals exist within. For example, social scripts around dating may dictate that certain actions by a woman mean that she is consenting to sexual activity. To accept an invitation up to a date's apartment late at night is part of a social script that culminates in

Table 1 Social schema types and examples

	(typically) Harmless	Oppressive
stereotype	Bartenders listen to the woes of their customers.	Men need sex.
social scripts	Business people introduce themselves to each other by shaking hands and saying "nice to meet you."	Accepting an invitation up to someone's apartment after a date precedes having sex.
social norms	During a college class, students should raise their hands and wait to be called on to speak.	Women should not drink alone with men.
standard story	An underdog triumphs over a more talented person by working harder.	A social deviant sexually assaults a young woman when she goes for a run alone at night.

intercourse. When a woman deviates from this script by refusing sex even after going up to a man's apartment after a date, this is evidence that she was 'asking for it.'

These scripts offer legitimizing cover for men to commit sexual assault while still maintaining that they have broken no social norms. Therefore, they are 'good guys' and can avoid social or legal consequences. Men can appeal to these social scripts to justify sexual assault to themselves, their social circle, or law enforcement. Juries often interpret the social meaning of a victim's actions as consent while discounting her own account of her consent. Ending gender-based violence will require, among other things, changing the stock of social schemas that create or reinforce deep inequalities and patterns of domination.

Standard stories of what 'real' sexual assault looks like are often expressed in criminal statutes.[5] Until the 1970s, marital rape was not criminalized at all in the US, and though all states now recognize some form of marital rape as criminal, twelve states maintain some form of spousal immunity (Casey 2024: 892–893). For example, in Ohio, sexual assault by a non-spouse does not require force or threat of force, but sexual assault by a spouse does. Thus, Ohio's criminal code does not recognize intercourse with a person who is intoxicated or unconscious to be sexual assault if the parties are married, though it would if they were not (Casey 2024: 892–893, 29 Ohio Rev. Code s2907.02 (2024)). As the Turner example illustrated, in 2015, California law treated sexual assault of an unconscious person as a less serious violation than assault that used force or the threat of force (Ford 2016). Laws that treat spousal assault and assault of an unconscious person differently than 'forcible' rape reflect sexist standard stories of what 'real' rape is: a stranger violently assaulting an innocent and vulnerable woman. Often, sexual assault that does not follow the standard story is dismissed as less wrongful, less harmful, or not rape at all.

C. Racist Social Meanings and Criminal Law Stereotypes.

In addition to criminal law recreating sexist social schemas, anti-black social schemas are also baked into criminal law in the US, though, today, less by explicit codification and more by the disparate ways that laws are enforced. Black people are often stereotyped as inherently criminal. Even more, black men have historically been purposely stereotyped as rapists, beginning shortly after the end of the Civil War (Gates 2019, Davis 1983, Douglass 1954). I have argued elsewhere (2023) that there is a connection between the disparate outcomes that black people face in the US criminal legal system and the central role the stereotype of the black criminal plays in American anti-black racial ideology. Likewise, Stephen Swartzer (2019) argues that American criminal law practices effectively communicate "racially derogatory, subordinating ideologies in much the same way that objectionable forms of racial discourse do" (3).

Racist criminal law schemas spill over into everyday, informal contexts as well. For example, after a short disagreement in New York City's Central Park in the summer of 2020, a white woman, Amy Cooper, called 911 and falsely stated, "an African-American man is threatening my life," as Christian Cooper (no relation), a black man, filmed her on his phone (Nir 2020). Amy Cooper invoked Christian Cooper's

[5] See Yap (2017) for a detailed philosophical treatment of standard stories of sexual assault.

race three times during the short call, exclaiming that he threatened her even as he clearly posed no danger (Nir 2020). One can make sense of her action and the public outrage that follows only if they are aware of the way that stereotypes of black men as inherently threatening or criminal are connected to police brutality against them. Amy's invocation of Christian's race without any other physical description of him only makes sense with the stereotype of black men as dangerous or criminal in mind. Even if one rejects this stereotype, they can recognize it in her 911 call. This example highlights how social meanings from more formal criminal law institutions spill over into informal individual actions as well. The stereotype of black men as criminals is degrading and dangerous, and the impact of this schema does not stop with the actions of state officials like judges, prosecutors, police, and corrections officers. As Swartzer notes, "It is no coincidence, then, that many of the common derogatory crime-related labels that structure our crime-related thoughts—like 'thug,' 'illegals,' 'pimps' and 'hos,' 'dealer,' 'crackhead,' 'gangbanger,' 'hood rat,' and 'inner city crime'—carry significant racial connotations" (13).

In sum, criminal law encodes social schemas. Social scripts dictate the rules for women in sexual encounters and standard stories limit the range of what counts as real rape. Criminal statutes defining sexual assault, policies of police and prosecutors, and conclusions of judges and juries not only express sexist social schemas. They also express social schemas that connect blackness with criminality. Stereotypes of black people, especially black men, make them likely to be cast as threats to safety rather than people to be protected from violence. These schemas are reflected in the disparate negative effects black people face as they interact with the criminal legal system, from police encounters to sentencing.[6]

Similarly, failures to criminalize, prosecute, and punish crimes that affect women of all races and the killing of black people express US society's lack of proper concern for women and black people. These criminal laws, policies, and enforcement actions in turn reinforce the social schemas at play, creating a looping effect in the cases of both sexist social schemas and racist ones. At every stage, criminal law depends upon and reinforces these existing social schemas.

3 Failures of Feminist Criminal Law Interventions

If criminal law reflects our underlying values, one might think that changing the criminal law could change those values. Many feminists have worked to change criminal law to reflect better social scrips, informed by feminist understandings of the myriad ways that sexual violence occurs. Using the criminal law in this way would require reforms at every stage of the criminal law process, including legislation defining sexual assault and sentencing ranges, funding and policy changes in investigation and prosecution, and commitment by the judiciary to sentence more harshly. I give two examples of interventions in criminal legal systems that might at first seem like promising ways of changing US values and the social schemas that express these values. Ultimately, I will argue that they are misguided.

[6] See Wirts (2023) for an overview of data showing disparate outcomes in criminal legal system.

The first is the response to the Brock Turner case. While the most visible response to Turner's short sentence was a recall of Judge Persky, advocates also successfully lobbied to change California's sexual assault criminal statutes (Ford 2016). When Turner was sentenced, "penetration with a foreign object" was a lesser charge than "acts of sexual intercourse" (Ford 2016). Likewise, sexual assault based on lack of consent due to unconsciousness or intoxication, as opposed to sexual assault based on use or threat of force, was treated as a lesser charge and probation-only sentences were allowed at a judge's discretion (Ford 2016). Both statutory provisions were factors in Turner's short, county jail sentence. In response to outcry, legislators changed the criminal definition of rape so that penetration with a foreign object is treated the same as "acts of sexual intercourse" and sexual assault on an unconscious person is not a lesser crime (Ford 2016). Likewise, legislators removed the option of probation-only sentences for sexual assault (Ford 2016). These changes seem to send the message that assaulting unconscious people or using a foreign object is just as serious and condemnable as "sexual intercourse" with force or threat of force.

Second, in the 1990s, in response to long-term feminist organizing, Canada revised its criminal sexual assault laws. Statutory reform expanded the legal concept of consent and stipulated that intoxication, by law, invalidates consent. Additionally, statutes now explicitly recognize that continuing with a sexual encounter after withdrawal of consent is sexual assault (R.S.C., 1985, c. C-46, s. 153.1(3)). Finally, for a criminal defendant to use the affirmative defense of 'mistaken belief in consent,' they must show that they took reasonable steps to secure consent, nearing an affirmative consent standard (R.S.C., 1985, c. C-46, s. 153.1(5(b))).

Political theorist Lise Gotell (2015), who was active in the movement to reform Canada's laws, explains the rationales that motivated these reforms. She refutes charges of 'carceral feminism' because reformers did not aim to increase the number of people in prison. Her purpose was to change the "legal story of rape" (59). Gotell's implicit argument is that the improved 'legal story' challenges the narrow *standard story* of rape as forcible stranger rape, i.e. the disturbed man who stalks the young woman out for a run at night. It offers a new, more nuanced and accurate story of the myriad contexts in which sexual assault takes place. On Gotell's view, by broadening the criminal legal statute, more standard stories of rape are now visible, and a wider array of victims and perpetrators are conceivable. The person committing rape need not be a stranger, but could be a friend, family member, or acquaintance. Likewise, friendly interactions do not negate sexual assault; the new standard stories of 'date rape' and 'campus sexual violence' show how friendly interactions can precede or follow assault. Moreover, reformed laws can contribute to a better story of good sexual encounters—ongoing affirmative consent is integral to a legally approved social script for a sexual encounter.

On the feminist penal expressivist view, criminalization has this effect because it links the existing social meanings of 'crime' to more types of sexual violence.[7] Criminalizing an activity is a way of marking the activity as outside of normal behavior, as deviant. By placing criminal liability on those who do not seek consent for sexual activity with another person, this law attempts to intervene in the social script that

[7] This is Lessig's "tying" strategy (1995: 1009–1012).

people use to navigate sexual encounters. [8] Thus, in criminalizing more categories of non-consensual sex, this reform aims at reshaping the social script of what a good, legal sexual encounter looks like.

It is important to distinguish this social-schema justification for broadening criminalization from a classic deterrence justification for the same reform. Under deterrence, broadened criminalization is justified because it makes the newly prohibited activity riskier or more costly. Would-be assaulters will take this higher cost into account in their rational calculation of whether to assault someone, so they are less likely to engage in that activity. Thus, at least some would-be assaulters will not commit, for example, date rape to avoid the risks and costs of the new criminalization. Classic deterrence is a strategy that imagines crime as being committed by an individual, rational actor, and it treats sexual assault as an isolated violent act. It does not account for how social meanings contribute to sexual assault or sexual assault's role in structural gender oppression.

In contrast to classic deterrence, Gotell's view is that changing the law can change *the social meanings* that contribute to the prevalence of sexual violence and its structural nature. She argues that the positive effect of these laws is not due to literal legal consequences (e.g., incarceration), as deterrence is. Rather than adding a risk or cost to the choice to commit sexual assault, changing the social meanings that contribute to sexual violence means that sex without consent would simply not occur as an option for most people, just as murder is unlikely to cross most people's minds in most situations. By attaching crime's social meanings—that a criminal act is outside the scope of typical, expected, or acceptable behavior—to more categories of non-consensual sex, they become less conceivable as options for action in the first place.

Despite the promise of this legal reform for changing social scripts, there is little empirical evidence that the new statutes had an impact on incidents of sexual assault or on social schemas. On Gotell's own reporting of the quantitative empirical evidence, prosecution of sexual assault in Canada has decreased since the reforms were enacted, while incidents of rape remain high (Gotell 2015: 60–61). This statistical evidence is extremely limited, however, as sexual assault is underreported, and there is no way to isolate the effects of other confounding variables.

As Gotell explains, her qualitative research shows that the same victim-blaming social scripts appear in transcripts of the court proceedings before and after the legal changes. Women who were drinking, alone with men, or at parties still rarely secure convictions (63–64). Moreover, judges often verbally chastise victims for engaging in "risky" behaviors, "as having 'questionable judgement,' as being 'careless,' as displaying 'youthful naiveté,' as engaging in 'provocative and foolish behavior'" (63). Victims "are also criticised for failing to respond quickly and assertively in the face of sexual threats" (63). Judges paint the few men they have convicted under the new consent standards as "clumsy Don Juan's" who understandably misread cues from women, implying women were really to blame (64). In short, judges rely on dominant, sexist scripts and gendered norms to sort criminal behavior from non-criminal, even after these legal reforms. The updated laws have only changed superficial vocabulary, not the underlying social schemas.

[8] This is Lessig's strategy of changing social meanings by describing a new ritual (1995: 1013–1014).

Though Gotell argues that the progress on changing social scripts has been limited, she still values the reformed statutes because they provide contestation of and friction with the overly narrow standard stories of sexual assault. But her own account gives us evidence that the impact of these laws on the way judges decide cases is limited. Her own evidence offers support for my claim that, though criminal law is a good diagnostic tool for sexism in a society, it is not a good remedy for it.

4 Criminal Law's Limitations in Changing Social Meanings

Gotell's evidence of unchanging outcomes is consistent with the limitations of criminal law's ability to address structural oppression. The difficulties that criminal law has with introducing new social meanings, as I argue in this section, offers a helpful framework for understanding why the judges Gotell researched continued to use sexist norms to interpret their cases even after legal reforms. Criminal law assigns liability for individuals for actions that fall outside the scope of socially acceptable behavior. This makes it difficult for criminal law to address structural injustice because structural injustice often means that the sexist or racist individual actions are considered normal, acceptable behavior. Criminal law is thus particularly unhelpful as a policy tool for limiting acts that are largely socially accepted and deeply rooted in complex networks of social meaning.

Criminal law fundamentally evaluates individual people and individual instances of atomized violence. Changes to statutes, prosecutorial policies, or sentencing guidelines cannot alter this fundamental feature of criminal law. Because of criminal law's basic individualistic structure, it is not well equipped to address sexual violence as a systemic part of gender-based oppression. It can only appraise the faults of individual people, not social meanings or schemas. While individuals can be convicted and punished, the social schemas that create conditions conducive to sexual violence cannot be put on trial.

More importantly, the social meaning of criminal liability is at odds with holding people accountable for behavior that is believed to fit with social norms. Criminality means socially deviant, so behavior that fits into existing hegemonic social scripts, including things like 'inviting someone into your home after a date is an invitation to have sex,' will be difficult to conceive of as criminal for many people. Rape is especially thought of as one of the most heinous crimes. The social meaning of rape as heinous means that it is difficult for many people to accept that behavior seen as not outside the bounds of normal, for example sex with an intoxicated person at a college party, could be rape. The thing that makes criminalization attractive as a tool for fighting sexual violence—the fact that it marks activities as deviant—is exactly what makes it hard to apply to sexual acts that fit into hegemonic social schemas that define a 'normal' sexual encounter. Our existing stereotypes and social scripts about rape depict those who commit sexual assault as monsters and outliers, not as brothers, friends, mentors, or colleagues (Yap 2017, Emerick and Yap 2024: 57–80). But the behavior some feminists are trying to criminalize is indeed commonplace and committed by people who in other arenas in their lives are good friends, supportive family members, or kind colleagues. For this precise reason, police, prosecutors, witnesses,

judges, and juries will find it difficult to conceptualize it as criminal at all. Indeed, this appears to be exactly the response from the judges that Gotell cites.

This complexity points to the importance of the adjacent social meanings that law interacts with but cannot directly change. All laws, criminal and otherwise, that introduce counter-hegemonic norms will face the problem of "social gravity" (Delgado and Stefancic 1995: 553–555). Invoking concepts very similar to social schemas, Delgado and Stefancic argue that "meanings and social interpretations," "social practices," and narratives about political and social values limit the ability of the legal change to take hold (553–555). In their primary case study, *Brown v. Board of Education* failed to bring about meaningful racial equality in public schools even though it announced a radical new constitutional principle of racial equality. Judges, school boards, administrators, and teachers interpreted *Brown* to apply only to the assignment of black students to schools (if they followed the ruling at all), leaving intact the deeper unequal structures in schools. The impact of *Brown* was severely limited because of the background schemas the court could not change: "friendship patterns, the way a teacher looks at or responds to a black child," "the ways in which librarians, bus drivers, shop owners, and landlords deal with the young black schoolchild and his or her family," "who is chosen for student body president, the debate team, and the cheerleading squad" (556). Delgado and Stefancic argue that the more radical the legal change, the more likely it is to be interpreted so narrowly that it produces little concrete change because all the adjacent social schemas will mitigate its impact. Their account is reminiscent of the way judges in Gotell's research interpreted away the new statutes to reproduce victim-blaming and acquittals.

Another example of law's inability to counter entrenched practices is the difficulties of eliminating dueling in the antebellum South. Lessig explains how social norms amongst wealthy elites assigned debilitating dishonor to a gentleman who refused a duel. Social climbers were incentivized to demand duels on the slightest provocation to cement themselves in the elite class. State lawmakers worked hard to limit this practice, but laws that banned dueling were ineffective against the more fundamental norms. The dishonor of refusing a duel was weightier than the possibility of dying in said duel, so legal consequences did little to deter participants. Even more frustrating for lawmakers, these elites already considered themselves to be above the rule of everyday law, so even those who wanted to avoid dueling could not appeal to the law without damaging their identity and place in the social hierarchy (970–972).

The dueling and school segregation examples show that enforcing a new, counter-hegemonic law is difficult because it will often come into tension with background social schemas. Existing hegemonic social messages will tend to drown out counter-hegemonic messages that laws send. This is even more true when the legal tool is criminal law. Given the fact that criminal law is particularly associated with strong moral condemnation and severe consequences, individuals tasked with interpreting and enforcing criminal laws will be even more hesitant to apply laws that would criminalize and punish acts that fit neatly within dominant social scripts.

Surely, social meanings do change. If legal changes face such strong headwinds, is there hope for any intervention? Cristina Bicchieri's work (2017) on social norm change, grounded in several campaigns that radically reduced harmful practices like genital cutting in specific communities, discounts the power of legal prohibitions for

changing social schemas. She focuses on changing shared expectations for action within "reference networks," which the law can rarely do. Reference networks are "the group of people we care about when making particular decisions" (14). The social norms of our reference networks are the expectations most likely to guide our actions. For example, Brock Turner was likely more influenced by what his friends and acquaintances expected from him at the frat party than what the state of California wrote in its statute books. Thus, when attempting to change social expectations that fuel campus sexual assault, national or state statutory prohibitions are likely to be indirectly relevant at best (Bicchieri 2017: 17). In Bicchieri's work, sanctions were only successful when they were chosen by the reference group after an explicit collective decision to abandon a harmful practice (116–118). The work of change took place in smaller communities that evaluated their practices and shared values. The sanctions only worked as mutual assurance that the group members would follow the new, collectively chosen norm.

In short, expanding criminal law responses to sexual violence is a poor strategy for changing sexist standard stories, social scripts, and gendered stereotypes. Because criminal law is about determining the failings of individual people, not recognizing the harmfulness of social norms or scripts, it intervenes at the wrong level to make meaningful social change. Law in general, and criminal law especially, faces social gravity so that counter-hegemonic laws are interpreted narrowly to reduce friction with existing social norms. Criminal law is supposed to mark out socially deviant behavior, so it is especially ill-suited to change norms deeply imbedded in many complex social schemas. The prevalence of sexist social meanings suggests that such changes are likely to be interpreted so narrowly that they produce little change in the legal sphere, let alone the broader social sphere. This model of criminal law as reinforcing dominant social schemes helps explain Gotell's own findings. Still, one might argue that these legal reforms could contribute to incremental change over time, as Gotell appears to, even if the immediate effects are hard to find. In the next section, I will explain why we should be wary of pursuing such reforms in hopes of long-term change.

5 Criminal Law and Racist Social Meanings

As I have noted throughout, criminalization, prosecution, and punishment rely on social schemas for their expressive powers. I have argued that criminal law is a poor tool for changing the social scripts that it relies on because criminal law is directed at evaluating individual acts to determine if they are deviant. It does not aim at evaluating the social scripts that dictate the boundary between normal, acceptable actions and deviant ones. In this section, I argue that ramping up criminal law responses to sexual assault in a society where social deviance is connected to racist views of black people is likely to reinforce anti-black racism. Other scholars, particularly in the social sciences, have pointed to the ways that using criminal law to combat sexual and domestic violence has only helped straight, white, middle-class women at best, leaving out poor women, women of color, and queer women (Goodmark 2023, Richie 2012: especially 3–4, 90–94). And it has come at the expense of deep harms to black and

other non-white communities, contributing to mass incarceration (Goodmark 2023: especially 9–13, 24, Gruber 2020, Richie 2012, Bumiller 2007: especially 21–30, Mills 2003: 7–8). My account is broadly consistent with the empirical accounts they give, and it provides a conceptual framework for explaining why the social meanings associated with criminal law and punishment undermine a feminist penal expressivist justification for increasing criminal law responses to sexual assault.

Given that the social meaning of increasing criminalization is dependent on social schemas, we must return to the constellation of schemas related to criminal law in the US. Criminal law conventionally expresses condemnation, but that condemnation can easily morph into more problematic expressions. Feinberg notes that, in addition to condemnation, American punishment practices also express "legitimized vengefulness" (403).

> To any reader who has in fact spent time in a prison, […] 'hatred, fear, or contempt for the convict' will not seem too strong an account of what imprisonment is universally taken to express. Not only does the criminal feel the naked hostility of his guards and the outside world—that would be fierce enough—but that hostility is self-righteous as well. His punishment bears the aspect of legitimized vengefulness (403).

Feinberg recognizes that in the existing criminal justice system in the US, already in 1965, incarceration had come to mean more than mere resentment or disapproval, which are consistent with liberal democratic values, but also undemocratic sentiments such as vengefulness, hostility, and hatred. Moreover, that hatred comes from the state itself and is legitimized by criminal legal processes.

Because of its ability to express "legitimized vengefulness," criminal law is a convenient tool for maintaining unequal statuses between privileged and oppressed social groups in societies with structural injustice. If social schemas can depict the oppressed groups as having criminal tendencies, not only can the privileged group segregate and punish the oppressed group, but it can also offer a putative moral justification for doing so. In that case, punishment that conventionally communicates condemnation will also conventionally communicate the lower status associated with the oppressed group. If, in the US, we have indeed conventionally associated blackness with criminality, then the punishments of black people will conventionally also express the lower social status of black people. This is still true if the punished person is in fact guilty of a serious crime and is punished proportionately as a result of an adjudication process that did not violate basic due process rights. The systemic injustice that takes the form of associating a whole group with criminality means the arrest, conviction, and punishment sends a message of group inferiority (e.g., racial disrespect). This message can be sent along with others that are more legitimate: The criminal act was wrongful. The state condemns that act and others like it. The state stands with the victim.

When an oppressed group is associated with criminality, this affects the message of punishment of members of that group, which, in turn, has more tangible effects as well. Those in the oppressed group are likely to be disproportionately investigated, prosecuted, convicted, and punished. Likewise, those who are in the privileged group

will be less likely to be conceived of as criminal, and thus they are likely to be investigated, prosecuted, convicted, and punished at lower rates.

These social schemas cause disparate outcomes because they shape our interpretations of others and our own possibilities for action. Audrey Yap (2017), borrowing Medina's term, argues that the 'social imaginary' has a limited stock of standard stories about sexual assault (5). In the limited stock of stories, we also have only a small set of possibilities for who can play the rapist—generally the mentally ill or moral monsters. This limits the set of people that most of us can even imagine committing sexual assault. For most of us, our friends or family members do not seem eligible for this role. This makes it more difficult to believe women who accuse 'nice young men' like Brock Turner.

To Yap's argument, I add that black men are easily cast as the rapist in the standard story because of racist stereotypes that are the result of purposeful racist projects (Gates 2019, Davis 1983, Douglass 1954). While it might be difficult for a white juror or judge to imagine a 'nice' white defendant as capable of sexual assault, racial stereotyping will mean that it would not be difficult for them to imagine a similarly situated black defendant as such (Bumiller 2007: 21–22). The social gravity of existing social meanings will pull most people in the dominant groups to interpret their own members as ineligible for deviance, while making it easy to interpret those in oppressed groups as threatening and deviant, particularly when there are widely available stereotypes that cast certain groups, e.g., black men, as rapists. Those who do not fit that stereotype, i.e. 'nice' white men like Brock Turner, are still likely to avoid more serious legal repercussions, as Gotell's discussions of Canadian judges illustrates.

The many social messages that criminal law actions send are not dependent on the intentions of the state or the individuals who carry out the actions. Nor are they dependent on some actual audience's interpretation. Rather, the meaning is dependent on social contexts that the speakers and audiences exist within. I borrow the argument that Anderson and Pildes (2000) make for the 'public meanings' of actions. "[Public] meanings are a result of the ways in which actions fit with (or fail to fit with) other meaningful norms and practices in the community. Although these meanings do not actually have to be *recognized* by the community, they have to be *recognizable* by it, if people were to exercise enough interpretive self-scrutiny" (1525). Consider their example: It used to be common for men in the workplace to compliment the appearance of women co-workers. Men did not typically mean these compliments as insults, nor did women always take them as such—they were not *recognized* as insulting by speaker or audience (1524–1525). But Anderson and Pildes argue that they were insulting because such compliments were the products of a set of sexist social meanings and practices that depicted women as decorative helpers for men in the workplace, subordinate and available for men's sexual gratification. The web of sexist social meanings implicated by the compliments made their public meaning *recognizable* as an insult, regardless of the intentions of the speaker or the interpretation of the audience.

I separate 'social meaning' from 'public meaning,' though the two are related. The social meaning of the compliment is that the woman is valuable in virtue of her appearance, not her work skills. To understand this complement as an insult (the

public meaning) requires recognizing *and criticizing* the script that kept women in a subordinate role in the workplace (the social meaning). Similarly, in the Amy Cooper and Christian Cooper example, one must understand the stereotype that black men are inherently criminal or threatening (social meaning) in order to label her 911 call racist (public meaning). When we criticize the workplace compliment as an 'insult' or label Amy's 911 call 'racist,' we can point out their sexism or racism because we identify the social meanings of these actions. Like public meanings, social meanings depend on the social context, not the intentions of the actor/speaker or the reaction of the audience.[9]

The social meaning of a legal reform can therefore be at odds with its creator's intent. Although feminist activists intend these legal reforms to express feminist values, not racist ones, their intentions do not control the social meaning of the laws. Of course, racist politicians or other actors can use criminal law to promote anti-black messaging on purpose. Even absent purposeful cooption for racist purposes, the promotion of criminal responses to sexual violence has the recognizable meaning of reinforcing anti-black stereotypes regardless of the intentions of those who promote them.

One might object that my argument is self-contradictory. It appears that I am saying both that criminal law cannot impact social schemas (it won't change the standard story of rape) and that it does have an impact on social schemas (increasing criminal responses to rape will make racial stereotypes stronger). The key difference between these two claims is that in the first, a new meaning that is inconsistent with most other social schemas must fight against the tide. Social gravity pulls against this novel story of sexual assault. The intervention requires that criminal law operate with a new set of social schemas that must find purchase in an existing network of meaning. In the second case, the racist depictions of black people as criminal and black men as prone to sexual violence are part of the dominant social schemas. No one must change their background concepts to interpret this new law as reaffirming the dangerousness of black men. These background concepts shape most people's interpretation of the world in some ways even if they consciously reject the social meanings. Moreover, people of the dominant group will not have to challenge their own conceptions of themselves or people they love as being incapable of rape, a crime we associate with moral monsters. No new set of social schemas is needed, but existing social schemas are reinforced.

6 Concluding Remarks

I have argued that criminal law reforms that attempt to change existing sexist social schemas will struggle against the social gravity of related social schemas. Even a perfectly crafted law enters a world where complex webs of sexist and racist social schemas already shape the way judges, juries, and community members interpret their world. When a new law enters the social world, the path of least resistance will

[9] Amy Cooper's intentions were also likely racist.

be to interpret it without changing interconnected social schemas. Sexist schemas will go unchanged, and racist schemas will be reinforced.

This argument has implications for feminist penal expressivism. Let us return to the three propositions that I attributed to penal expressivism. First, criminal law practices, particularly punishment, express condemnation of criminalized act types and punished act tokens. My argument has not challenged this proposition but nuanced it. Criminal law expresses condemnation, but this expression is dependent on social contexts. Some social contexts—those where an oppressed racial group is stereotyped as criminal—mean that punishment will also send racist messages. Second, criminal law and punishment are justified if and only if they properly express condemnation of wrongful acts. My argument concludes that considered reforms are not justified under penal expressivism because in the context of the US, they cannot properly express condemnation of sexist acts, and they express improper racist messages. Finally, penal expressivism also can include the proposition that, in addition to expressing condemnation, criminal law practices also express the values of a given community. I have argued that this is true, and in the US, these practices express sexist and racist values. But changing the criminal law cannot change the underlying values.

Others have argued that penal expressivism faces challenges in societies characterized by structural injustices like sexism and racism. Some philosophers of punishment have argued that a state can lose the standing to condemn if it is complicit in conditions that lead to crime (Tadros 2009), or if the state is acting hypocritically in punishing the same kinds of wrongs it perpetuates itself (Duff 2010, Watson 2015). These are important critiques of the propriety of an unjust state expressing condemnation. But I have focused on a different problem. Punishment's ability to express condemnation at all is hampered in a society marked by structural oppression because that oppression affects the social meanings that are available for criminal law to draw on, regardless of whether the state has the standing to condemn.

The scope of this paper is limited in several ways. It has focused on sexual violence, especially sexual assault. Some of these arguments could also apply to other types of crime, but the argument here has depended in large part on examining the social meanings associated with sexual assault in the US and Canada. I have also been unable to examine in detail how a victim-survivor's gender, race, disability, immigration status, criminal record, and LGBTQ identity affect if they are believed, legally protected, and valued, or conversely, criminalized themselves (Cossins 2003, Richie 2012 and Goodmark 2023).

Importantly, this paper has not made any statement about whether individual victims of sexual assault should or should not seek criminal responses. There are few if any good options for victim-survivors to get safety, justice, or resources in the wake of sexual violence. For some victim-survivors, criminal law might provide some safety or official acknowledgment of the wrong they endured. Filing charges might also be necessary for securing certain kinds of state support. Nothing in this paper should be interpreted as implying that it is wrong for victim-survivors to seek help or justice from criminal law institutions.

Finally, this paper is not a call to give up state-based or legal strategies for ending sexual violence. The state has a duty to protect its members from violence of all

kinds. The US's failure to protect women from sexual violence means that it owes corrective justice responses to women. The US also owes its black (and other non-white) members protection from ongoing racial violence in addition to meaningful corrective justice. Given historical and ongoing anti-black racism in the US, we should be extremely parsimonious with criminal law, only using it when the gains are sufficiently serious and likely to justify its risks, including the risks of reinforcing racist social schemas. Today, many activists remain committed to ending sexual violence without using the criminal law (Richie 2012, Goodmark 2023, INCITE! 2016). These activists draw on a long history of feminist rejections of the use of criminal law to combat sexual violence, going back to the late 1970s at least (McDuff 1977). This long anti-racist, anti-violence tradition recommends investigating non-criminal law avenues for addressing and preventing sexual violence, starting with robust state-sponsored material support for victim-survivors.

References

Anderson, Elizabeth, and Richard Pildes. 2000. "Expressive Theories of Law: A General Restatement." University of Pennsylvania Law Review. 148.5, 1503–1576.

Bicchieri, Cristina. 2017. Norms in the Wild: How to Diagnose, Measure, and Change Social Norms. New York: Oxford University Press.

Bumiller, Kristin. 2008. In an Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence. Durham: Duke University Press.

"California Judge Recalled for Sentence on Sexual Assault Case." 2019. Harvard Law Review. 132.4, 1369–1376. https://harvardlawreview.org/print/vol-132/california-judge-recalled-for-sentence-in-sexual-assault-case/#footnote-ref-66

Casey, Kyle et al. 2024. "Rape and Sexual Assault: Annual Review of Gender and the Law." Georgetown Journal of Gender and the Law. 25, 871–940.

Cossins, Anne. 2003. "Saints, Sluts, and Sexual Assault: Rethinking the Relationship between Sex, Race and Gender." Social and Legal Studies 12.1, 77–103.

Davis, Angela Y. 1983. "Rape, Racism and the Myth of the Black Rapist." in Women, Race & Class. First Vintage books edition. New York: Vintage Books, 172–200.

Delgado, Richard, and Jean Stefancic. 1995. "The Social Construction of 'Brown': Law Reform and The Reconstructive Paradox." William and Mary Law Review. 36.2, 547–578.

Douglass, Frederick. 1954. "Why is the Negro Lynched?" in Douglass, Frederick, and Philip Sheldon Foner. The Life and Writings of Frederick Douglass. Vol. 4. New York: International Publishers, 498–499.

Duff, R. A. 2010. "Blame, Moral Standing and the Legitimacy of the Criminal Trial." Ratio. 23.2, 123–140.

Emerick, Barrett, and Audrey Yap. 2024. Not Giving up on People: A Feminist Case for Prison Abolition. Lanham: Rowman & Littlefield.

Feinberg, Joel. 1965. "The Expressive Function of Punishment." The Monist. 49.3, 397–423.

Ford, Matt. 2016. "How Brock Turner Changed California's Rape Laws." The Atlantic. https://www.theatlantic.com/news/archive/2016/10/california-law-brock-turner/502562/

Gates, Henry Louis. 2019. Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow. New York: Penguin Press.

Goodmark, Leigh. 2023. Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism. Oakland, California: University of California Press.

Gotell, Lise. 2015. "Reassessing the Place of Criminal Law Reform in the Struggle Against Sexual Violence: A Critique of the Critique of Carceral Feminism." in A. Powell et al., eds. Rape Justice. New York: Palgrave Macmillan, 53–71.

Gruber, Aya. 2020. The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration. Oakland, California: University of California Press.

Hampton, Jean. 1992. “Correcting Harms versus Righting Wrongs: The Goal of Retribution.” UCLA Law Review. 39, 1659–1702.
Haslanger, Sally. 2015. “Distinguished Lecture: Social Structure, Narrative and Explanation.” Canadian Journal of Philosophy. 45.1, 1–15.
---. 2017. “Racism, Ideology, and Social Movements.” Res Philosophica. 94.1, 1–22.
INCITE! Women of Color Against Violence. 2016. Color of Violence: the INCITE! Anthology. Durham: Duke University Press.
Koss, Mary P., Christine A. Gidycz, and Nadine Wisniewski. 1987. “The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students.” Journal of Consulting and Clinical Psychology. 55.2, 162–170.
Lessig, Lawrence. 1995. “The Regulation of Social Meaning.” The University of Chicago Law Review. 62.3, 943–1045.
Levine, Ethan Czuy. 2021. Rape by the Numbers: Producing and Contesting Scientific Knowledge about Sexual Violence. United States: Rutgers University Press.
McDuff, Robin, Deanne Pernell, and Karen Saunders. 1977. “An Open Letter to the Anti-Rape Movement.” Santa Cruz Women Against Rape. https://issuu.com/projectnia/docs/letter-to-the-antirape-movement
Medina, José. 2013. The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations. Oxford: Oxford University Press.
Miller, Chanel. 2019. Know My Name: a Memoir. New York, New York: Viking, an imprint of Penguin Random House LLC.
Mills, Linda G. 2003. Insult to Injury: Rethinking Our Responses to Intimate Abuse. Princeton, N.J: Princeton University Press.
Nir, Sarah Maslin. 2020. “How Two Lives Collided in Central Park, Rattling the Nation.” New York Times. June 14, 2020. https://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html
Persky, Aaron. 2016. Full Comments at Brock Turner’s Sentencing, June 2, 2016. Published by the Guardian. https://www.theguardian.com/us-news/2016/jun/14/stanford-sexual - assault-read-sentence-judge-aaron-persky
Richie, Beth. 2012. Arrested Justice: Black Women, Violence, and America’s Prison Nation. 1st ed. New York, NY: New York University Press. doi:https://doi.org/10.18574/9780814723913.
Rutherford, Alexandra. 2017. “Surveying Rape: Feminist Social Science and the Ontological Politics of Sexual Assault.” History of the Human Sciences. 30.4, 100–123. doi:https://doi.org/10.1177/0952695117722715.
Shelby, Tommie. 2016. “Punishment.” in Dark Ghettos: Injustice, Dissent, and Reform. Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 228–25.
Swartzer, Steven 2019. “Race, Ideology, and the Communicative Theory of Punishment.” Philosophers’ Imprint. 19, 1–22.
Tadros, Victor. 2009. “Poverty and Criminal Responsibility.” Journal of Value Inquiry. 43, 391–413.
Taylor, Chloë. 2018. “Anti-Carceral Feminism and Sexual Assault—A Defense.” Social Philosophy Today. 34, 29–49.
Terwiel, Anna. 2020. “What Is Carceral Feminism?” Political Theory. 48.4, 421–442.
Watson, Gary. 2015. “A Moral Predicament in the Criminal Law.” Inquiry. 58, 168–188.
Wirts, Amelia M. 2023. “What Does It Mean to Say ‘The Criminal Justice System Is Racist’?” American Philosophical Quarterly. 60. 4, 341–354.
Yap, Audrey S. 2017. “Credibility Excess and the Social Imaginary in Cases of Sexual Assault.” Feminist Philosophy Quarterly. 3.4, 1–23.